Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1814

RELLA VERDE APARTMENTS, INC., *et al.*,
Petitioners,

v.

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA COUNTY BOARD OF SUPERVISORS, PIMA COUNTY ASSESSOR, PIMA COUNTY TREASURER,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The Opinion below is appended to the Petition for Writ of Certiorari. The Opinion was delivered on January 20, 1976, and amended on February 20, 1976. Motion for Rehearing was denied on February 24, 1976, and the Supreme Court of Arizona denied review on March 16, 1976.

The Appendix at page 9a (fourth paragraph) omitted a portion of that Opinion. That portion reads:

> "Appellants claim that Appellees did not sustain their burden of proof on the issue of unconstitutionality."

JURISDICTION

Respondents do not question the jurisdiction as set forth in the Petition. Respondents are doubtful, however, that the constitutional question has been properly preserved for review by this Court. The decision below rests upon fair and substantial bases, without the direct resolution of the constitutional question. Respondents believe that this Court's review by certiorari should not be invoked under the principles in *Lawrence v. State Tax Commission*, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners fairly quote portions of the United States Constitution as well as the Constitution of the State of Arizona. Respondents question, however, whether Petitioners had properly presented the equal protection clause issue before the court below.

STATEMENT OF FACTS

Petitioners' Statement of Facts makes some unwarranted conclusions as to the evidence which was presented at the trial level of this case. To be sure, it is difficult, if not impossible, to determine the ultimate resolution of factual conflicts made by the trial court. No findings of fact or

conclusions of law were requested, and none were made. (See Arizona Rules of Civil Procedure, Rule 52(a) and *Lenslite Co. v. Zocher*, 95 Ariz. 208, 388 P.2d 421 at 426.)

Petitioners have failed to append the Judgment of the state court as required by Rule 23(1)(j), U.S. Supreme Court Rules. Insofar as pertinent, the Amended Judgment reads:

> "4. Equalization Order No. 5, issued by the Arizona State Board of Property Tax Appeals on July 16, 1973, is void as it relates to the properties of the Plaintiffs herein categorized as "02", "03" and "07" in the Standard Land Use Classification Code issued by the Department of Property Valuation. All other Plaintiffs not in these categories are not affected by this Judgment and Equalization Order No. 5 is not void as to those Plaintiffs or their properties.
>
> 5. The Court further finds that Plaintiffs' properties should be taxed at the 1973 rate, based on the assessed value which existed on the Plaintiffs' properties prior to the imposition of Equalization Order No. 5."

Respondents believe that the salient factual predicate upon which the Arizona Court of Appeals has rendered its Opinion are more accurately and lucidly set out in the Opinion itself (see pages 6a through 9a of Appendix to Petition).

It must be emphasized, however, that the Arizona State Board of Tax Appeals is a body created by statute (Arizona Revised Statutes § 42-141) and consists of three members appointed by the Executive Branch of the state government. Possession of certain qualifications is a prerequisite to the appointment. A.R.S. § 42-141 C. Among their several duties

is a responsibility to assure equalization of values of properties subject to ad valorem taxation, both on state and county wide basis. A.R.S. § 42-143.

During tax year 1973, the Board discharged that duty by the promulgation of Equalization Order No. 5. The Board found justification for its action from information supplied to it in formal hearings, from its own investigation, and from a sales-ratio study conducted by a private firm retained for that specific purpose. In so doing, the Board acted in good faith and without any intention to place a disproportionate assessment on the Petitioners' properties. In point of fact, the members of the Board believed that the modest increases in value reflected by the Order were necessary to assure more equal treatment to all properties within the State. The trial court did not find any systematic and intentional conduct to deliberately create inequality. The Court of Appeals in reviewing the record specifically concluded:

> "We are not able to find from the evidence any bad faith on the part of the State Board of Tax Appeals and there is no evidence that any inequality was deliberately created."

Whatever the Petitioners' contentions may have been at the trial, the record before this Court does not support the conclusions made by Petitioners in their Statement of Facts. Suffice to say that there is no basis for the assertions made in the Petition that the Court of Appeals of the State of Arizona was "factually incorrect."

The ultimate operative facts are as follows:

The State of Arizona placed all property subject to ad valorem taxation into four classes and assessed these classes at various percentages of full cash value. This system withstood the challenge of constitutionality in *Apache County v. Atchison, Topeka & Santa Fe Ry. Co.*, 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542, 106 Ariz. 356, 476 P.2d 657, with this Court denying certiorari at 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542.

The individual county assessors were not able to annually update the values of all properties to keep up with inflationary and market trends. Consequently, the values of properties under scrutiny had been "frozen" for several years. During 1973, a computerized system of valuation of single-family residential properties had been devised and implemented. This resulted in an overall increase of approximately 30% in values of all such properties. No corresponding method of annual updating had been developed in that particular year for other types of properties.

The Board of Tax Appeals, through a series of equalization orders, required the assessors to increase certain assessments by specific fixed percentages. The Petitioners' properties on the whole were increased approximately 20%. These orders were effective for one year only, since the institution of new and updated procedures allowed annual revaluation of all properties in subsequent years. It was the opinion of the Board that the orders achieved greater equality in all property values than existed prior to their institution.

The trial court did not make a finding that the Petitioners were the victims of unequal treatment. Indeed, no finding at all was made in regard to the ultimate result of the equalization order. It is true that the trier of fact voided the Order as applied to the Petitioners only, but it did not state the grounds upon which it made its ruling.

One of the principal contentions by Petitioners below was a challenge to the *statutory authority* of the Board to enter the Order. On appeal, the court concluded that not only did Petitioners fail in their proof of intention to discriminate, but also failed to establish that overall inequality, indeed, existed. For these reasons, Respondents strongly challenge the bare conclusion found in the Petition that "said Order produced a total lack of uniformity." The factual conclusion is purely unilateral and not supported either by the Opinion of the Court of Appeals or the trial record itself.

HOW FEDERAL QUESTION WAS RAISED

Respondents believe that the Petition fails to comply with Rule 23(1)(f), U.S. Supreme Court Rules. To be sure, the denial of Equal Protection under the Fourteenth Amendment of the United States Constitution was first included in the Petitioners' Complaint. Petitioners did not, however, seek or receive a specific ruling of the trial court on this particular question. Numerous other non-constitutional grounds had been urged which in themselves could have accounted for judgment in the trial court.

In an attempt to sustain the Judgment on appeal, general reference to the Equal Protection Clause of the Fourteenth Amendment was made. However, it is apparent from the Opinion that the thrust of Petitioners' argument was directed to other issues. They claimed specifically as follows:

A. That there is no statutory authority for the Order;

B. That the Order was arbitrary and amounted to an abuse of discretion; and

C. That the Order was procedurally defective for a lack of prior notice to the taxpayers.

Following the rendition of the decision of the Court of Appeals, Petitioners filed an extensive Motion for Rehearing. As a result, the Court of Appeals corrected certain errata by an Order dated February 20, 1976.

A review of this Motion for Rehearing will demonstrate that the Equal Protection Clause argument was not put into sharp focus so as to properly preserve the matter for review by this Court.

It is small wonder that the Petition does not indicate the manner in which the federal question sought to be reviewed was raised. It does not show the way in which this question was passed upon by the court. Neither does it contain pertinent quotations of specific portions of the record or a summary thereof and it does not have reference to places in the record where the matter appears. (Obviously, no portions of the record, voluminous or otherwise, have been included in an appendix to the Petition.) Respondents respectfully urge that Petitioners have failed to show that the federal question was timely and properly raised so as to give this Court appropriate basis to review the Judgment on writ of certiorari.

REASONS FOR DENYING THE WRIT

In the first instance, the Petitioners have failed to fully comply with the requirements of Rule 23(1)(f), U.S. Supreme Court Rules. As was pointed out above, the noncompliance comes about as a result of their failure to obtain definitive rulings on the question at the trial court and appellate levels.

Secondly, Petitioners have failed to properly frame and establish the factual predicate upon which the constitutional question now raised can be determined. There is a total lack of factual determination that an inequality did, in fact, exist or that it was deliberately created. The Arizona Court of Appeals Opinion states:

> "We are not able to find from the evidence any bad faith on the part of the State Board of Tax Appeals and there is no evidence that any inequality was deliberately created. Appellees did not establish systematic, intentional discrimination and there was accordingly no question presented as to the unconstitutionality of the assessment." 544 P.2d at 682, 25 Ariz. App. 458.

Finally, the Petition fails to show any special or important reasons for the granting of the Writ. There is a complete absence of a showing of any federal questions of substance not heretofore determined by this Court or that the state court has decided the question not in accord with applicable decisions of this Court. (Rule 19(1)(a), U.S. Supreme Court Rules.)

The decision below recognized the constitutional principles discussed by the Arizona Supreme Court in *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791. The latter decision, which comprehensively states the law of Arizona on the subject, found almost exclusive support in the teachings of the Supreme Court of the United States. These include the well-established guidelines of *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979, and *Rowley v. Chicago and N.W. Ry. Co.*, 293 U.S. 102, 55 S. Ct. 55, 79 L.Ed. 222. Nor was *Cumberland Coal Co. v. Board of Revision of Tax Assessments*,

284 U.S. 23, 52 S. Ct. 48, 76 L.Ed. 146, overlooked. (Something which is now suggested by the Petition.)

The case now sought to be reviewed involves simply a difference of opinion between the assessing authorities and the taxpayers and could arguably involve errors in judgment on the part of the Board of Tax Appeals. It falls squarely within the category of cases discussed by *Cumberland Coal Co. v. Board of Revision of Tax Assessments, supra,* when the Court stated at 52 S. Ct. 49:

> "The case is not one of mere errors in judgment in following a proper method (*Sunday Lake Iron Co. v. Wakefield Township*, 247 U.S. 350, 352, 353, 62 L.Ed. 1154-1156, 38 S. Ct. 495, *Southern R. Co. v. Watts*, 260 U.S. 519, 526, 67 L. Ed. 375, 387, 43 S. Ct. 192).

It is well recognized that a board of equalization acts in a judicial or quasi-judicial capacity and is not subject to collateral attack. *Stanley v. Board of Supervisors of the County of Albany*, 121 U.S. 535, 7 S. Ct. 1234, 30 L.Ed. 1000.

In *Maish v. Territory of Arizona*, 164 U.S. 599, 17 S. Ct. 193, 41 L.Ed. 567, at 571, this Court stated:

> "It is unnecessary to determine whether this board erred in its judgment as to the value of this property, whether it would not have been better to have made further examination and taken testimony as to the cost of construction, present condition, etc. Matters of that kind are left largely to the discretion and judgment of the assessing and equalizing board, and if it has acted in good faith its judgment cannot be overthrown. (Citing case)."

The Arizona decision sought to be reviewed is fully in accord with *Charleston Federal Savings and Loan Association v. Alderson*, 324 U.S. 182, 65 S. Ct. 624, 89 L.Ed. 857.[1] The appellants' argument there was not unlike the attack made by Petitioners here. In rejecting the argument, this Court said:

> "Appellants argue that denial to them of the equal protection of the laws is established by the proof of the assessor's discrimination in his mode of assessment of the same kind of class 1 property belonging to different taxpayers, and that this discrimination is shown to be 'intentional and systematic.' But this argument overlooks the well established rule that the constitutional prohibition applies only to taxation which in fact bears unequally on persons or property of the same class and that mere differences in modes of assessment do not deny equal protection unless they are shown to produce such inequality. (Citing cases) Nor does the equal protection clause prohibit inequality in taxation which result from mere mistake or error in judgment of the tax officials, (Citing cases) or which is not shown to be the result of intentional and systematic undervaluation of some but not all of the tax property in a single class. (Citing cases)." at 89 L.Ed. 863-864.

[1] Factually, this case is most analogous to the contentions made by Petitioners, and should by itself be dispositive of the issues raised.

Petitioners suggest that their right to equal protection of the laws has been transgressed because of an apparent lack of mathematical precision in the Board's arrival at Equalization Order No. 5. Yet, arithmetic equivalents in valuation of property cannot be expected and are not required. *Concordia Fire Insurance Company v. Illinois*, 292 U.S. 535, 52 S. Ct. 830. 78 L.Ed. 1441, Cf., *Charleston Federal Savings and Loan v. Alderson, supra.* Similar orders of the Board of Equalization had been approved by this Court even prior to Arizona's Statehood. *Copper Queen Cons. Min. Co. v. Territorial Board of Equalization*, 206 U.S. 474, 27 S. Ct. 695, 51 L.Ed. 1143. In short, this subject has long been fully exhausted by decisions of the United States Supreme Court and needs no further elucidation. The Arizona ruling is completely in accord with those decisions. Petitioners' rights have been fairly adjudicated in the state court systems and no cogent reason appears for this Court to be concerned with so trivial a matter.

CONCLUSION

Respondents have demonstrated that the Petition is procedurally deficient, the alleged constitutional question had not been sufficiently and properly preserved for review and that in any event, the decision of the Arizona Court of Appeals, as approved by the Arizona Supreme Court, is fully in accord with longstanding opinions of the United States Supreme Court.

The question presented is insubstantial and amounts to no more than a bona fide factual disagreement between a group of taxpayers and the assessing authorities. Review of the evidence or inferences drawn from it is not a sufficient cause to grant the writ. *General Talking Pictures Corp.*

v. Western Electric Company, 304 U.S. 175, 58 S.Ct. 849, 851, 82 L.Ed. 1273, 1275.

For these reasons, Respondents urge that the Petition for Writ of Certiorari be denied.

Respectfully submitted this _____ day of July, 1976.

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